

1 Oliver D. Smith
 2 7 Aldenham Road
 3 Radlett, Hertfordshire
 4 WD7 8AU, England
 + 44 07769176821
 oliveratlantis@gmail.com

5 Pro se

6 **UNITED STATES DISTRICT COURT**
 7 **NORTHERN DISTRICT OF CALIFORNIA**



9 OLIVER D. SMITH

) Case No. 3:24-cv-00727-AGT

10 Plaintiff,

) **EX PARTE MOTION**

11 vs.

) Judge: Hon. Alex. G. Tse

12 JOHN DOE

13 Defendant

)

16 Plaintiff Oliver D. Smith recently filed an ex parte application in accordance with Federal Rules
 17 of Civil Procedure, Rule 45 (a) (3) for a court clerk to issue and sign subpoena form (otherwise left
 18 blank) (ECF No. 50). The subpoena is to produce electronic information under Rule 34 to identify
 19 the John Doe. Substack Inc., was recently dismissed as a defendant in this case (ECF No. 49), but the
 20 Plaintiff wishes to now serve a subpoena on them, as a third-party, in accordance to identify the John
 21 Doe¹ with Federal Rules of Civil Procedure, Rule 45 (c): “NONPARTIES. As provided in Rule 45 a
 22 nonparty may be compelled to produce documents and tangible things or to permit an inspection.”
 23 The Plaintiff was recently given until **10 January 2025** to identify the John Doe, but he can only do
 24 that through a subpoena. He believes he can meet the deadline but depending on this ex parte motion.

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28 ¹ Substack Inc., has access to electronic information that can identify the John Doe in this case.

1 The Plaintiff's concern is he does not live near the headquarters of Substack Inc., which are at
 2 the address: 111 Sutter Street, 7th Floor, San Francisco, CA 94104. According to Rule 45 (a) (2): "A
 3 subpoena may command production of documents, electronically stored information, or tangible
 4 things at a place within 100 miles of where the person resides, is employed, or regularly transacts
 5 business in person". The Plaintiff therefore requests that the third-party is commended to produce the
 6 electronic information (to identify the John Doe) either by email to his email address,² or alternatively
 7 at San Francisco Courthouse, 16th Floor, 450 Golden Gate Avenue, San Francisco CA 94102.³ This
 8 is the clerk's office. I would request the electronic information as documents are provided to the judge
 9 Hon. Alex. G. Tse (copy marked "CHAMBERS"). The Plaintiff Oliver D. Smith lives in a different
 10 country (the UK), so the aforementioned suggestions for compliance are the best practical solutions.
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 12

13 The Plaintiff has emailed Substack Inc and their attorney to voluntarily produce the information
 14 to identify the John Doe by **13 December 2024**, but they are unlikely to do this since they rejected
 15 doing this previously, so it is likely to be now done through a third-party subpoena where the court is
 16 to compel Substack Inc to produce the documents that identify the John Doe in accordance with Rule
 17 45 (c). The Plaintiff therefore respectfully asks the judge to make an order granting him permission
 18 to either request that the third-party is commended to produce the electronic information (to identify
 19 the John Doe) by email to his address, or alternatively at the San Francisco Courthouse clerk's office.
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 21

22 Dated: 12.12.2024 (12 December 2024)



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 24 Oliver D. Smith, pro se.
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 28² oliveratlantis@gmail.com

³ The distance of Substack Inc's HQ to the San Francisco Courthouse is only a 15-minute walk (1.9 miles) according to Google Maps.